IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 1046 OF 1987

The State of Maharashtra .. Appellant

versus

Raosaheb Rajaram Jadhav .. Respondents

...

Mr.D.P. Adsule, APP for the appellant-State.

None for the respondent.

CORAM : V.M. KANADE, J

DATED : 10th September 2004.

ORAL JUDGEMENT:-

1. Heard the learned APP appearing on behalf of the appellant-State. None appears on behalf of the respondent.

2. The State has challenged judgement and order passed by the Asstt. Sessions Judge, Sangli in Sessions Case 116 of 1986. The respondents were real

brothers were charged for having committed an offence under section 452, 325, 323 366(II) r/w section 34 of the Indian Penal Code. The prosecution case is that the accused nos.1 to 3 had forcible entered the house of the father-in-law of the accused no.2 Laxman and had abducted the complainant's daughter Sajabai. The prosecution case is that accused no.2 wanted to marry Sajabai since out of his first wedlock, there were no issues. The wife of accused no.2 Shevantabai was the eldest sister of Sajabai.

3. The prosecution case is that on 17th January 1986, the accused entered the house of the complainant assaulted the complainant and his family members, lifted Sajabai and took her forcibly to the tempo that was parked on the road and left village Haroli. The wife of accused no.2 also had accompanies them in the said tempo. The prosecution in order to prove their case examined Sajabai, Shevantabai, wife of accused no.2, complainant and also two other independent witnesses. The prosecution also examined the Doctor and the Investigating Officer. The trial Court after appreciating the evidence on record came to the conclusion that the prosecution had suppressed the material facts. The learned APP has taken me through

the oral evidence on record as also the judgement and order of the trial Court. From this evidence, it appears that the story as given by the eye witness is inconsistent with each other. Apart from that, so far as the theory of kidnapping is concerned, the complainant does not mention in the FIR that his daughter was abducted by the accused. Sajabai whose evidence is recorded does state that she was forcibly taken in the tempo. However, later on, in the same breath, she says that accused no.2 stayed away from her and in the morning asked his wife Shevantabai to take her back to her parents. In the light of this evidence, the case of kidnapping has not been proved beyond reasonable doubt. So far as the offence of assault is concerned, the injuries which was suffered by the complainant and other witnesses are simple injuries in the form of bruises, abrasions and lacerated wounds on the arm and upper thighs. However, the view taken by the trial Court cannot be said to be perverse and therefore, I would like to interfere in the said finding. The incident in question took place on 18th January 1986. More than 16 years have passed.

4. Under these circumstances, appeal is

dismissed.

V.M. KANADE, J